IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 6TH JUNE 2007 / 16TH JYAISHTA 1929

Crl.MC.No. 991 of 2007()

C.C. NO.1021/2004 OF JFCM - II, COCHIN

PETITIONER/ACCUSED NO.3

SMT.PRABHA RAMESH BABU,
W/O.RAMESH BABU, MANIKKERI HOUSE,
ERATTAKULANGARA ROAD, PACHALAM P.O.,
COCHIN-12.

BY ADV. SRI.JOY THATTIL ITTOOP

RESPONDENTS:

---

1. SRI.V.T.KALESH, S/O.THANKAPPAN,
THONDIPARAMBIL, H.NO.14/1873, CHULLICKAL,
COCHIN-5.

2. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. S.U. NAZER
SRI.R.SUDHISH
SMT.M.MANJU

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 06/06/2007, ALONG WITH CRMC NO. 1000 OF 2007 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.Nos.991 & 1000 of 2007

Dated this the 6th day of June, 2007

ORDER

Petitioner is the 3rd accused in two prosecutions, both under Section 138 of the Negotiable Instruments Act and initiated by the 1st respondent/complainant. In the cause title, the 1st accused is shown to be a partnership firm represented by its Managing Partner. The 2nd accused is the Managing Partner and the 3rd accused is described to be a partner of the 1st accused. In the body of the complaint, there is nothing to show that the petitioner, the 3rd accused has anything to do with the 1st accused firm. Of course, in para.4, there is an identical averment in both the complaints that the lawyer notice was sent to the accused including the 3rd accused and the 3rd accused had sent a reply raising untenable contentions. The reply notice has been placed before the Court for perusal. It clearly shows that a contention was raised that the petitioner has neither any charge of the firm nor was she in any way responsible for the conduct of the business of the firm.

2. The learned counsel for the petitioner relies on the dictum in **S.M.S Pharmaceuticals Ltd. v. Neeta Bhalla** [2005(8) SCC 89]. The said decision by the apex Court is authority of the proposition that it is incumbent on the complainant to make appropriate averments to attract culpability with the aid of Section 141 of the N.I Act. If the

complainant has such a case, it has got to be averred specifically that the accused is in charge of and responsible to the company for the conduct of its affairs. Such a crucial assertion having not been made in either of the two complaints, certainly I am in agreement with the learned counsel for the petitioner, the 3rd accused that the prosecution against the 3rd accused, a woman is untenable and is liable to be quashed.

3. In the result, these Crl.M.Cs are, allowed. C.C.Nos.1021 of 2004 and 1048 of 2004 - both pending before the Judicial Magistrate of the First Class-II, Kochi are hereby quashed. Needless to say that the prosecutions in so far as it relates to the co-accused shall continue.

(R.BASANT, JUDGE)

rtr/

R.BASANT, J

Crl.M.C.Nos.991 & 1000 of 2007

Dated this the 28th day of March, 2007

ORDER

Heard. Admitted. Issue notice to the 1st respondent/complainant by speed post with acknowledgment due. Simultaneously give notice to the learned counsel for the 1st respondent/complainant, who is appearing before the court below and file a memo to that effect in 10 days.

2. Call on 24.05.2007.

Crl.M.Appln.Nos.1654 & 1670 of 2007

There shall be an interim stay as prayed for till 24.05.2007.